

12
United States
Circuit Court of Appeals
For the Ninth Circuit.

T. TOMICH, HARRY F. SCOTT and H. MUL-
BERGER,

Appellants,

vs.

UNION TRUST COMPANY, a Corporation, and
SPOKANE & EASTERN TRUST COM-
PANY, a Corporation,

Appellees.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MONTANA.

FILED

MAR 15 1929

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF SOLICITORS
OF RECORD.

JOHN A. SHELTON, Esq., Butte, Montana,
W. N. WAUGH, Esq., Butte, Montana,
Solicitors for Plaintiffs and Appellants.

Messrs. GUNN, RASCH & HALL, Helena, Mon-
tana,

Solicitors for Union Trust Company, a
Corporation, and Spokane & Eastern
Trust Company, a Corporation, De-
fendants and Appellees.

In the District Court of the United States in and
for the District of Montana.

No. 510—IN EQUITY.

T. TOMICH, HARRY F. SCOTT, and H. MUL-
BERGER,

Complainants,

vs.

UNION TRUST COMPANY, a Corporation,
SPOKANE & EASTERN TRUST CO., a
Corporation, FEDERAL LAND BANK OF
SPOKANE, a Corporation, BIG HORN
TULLOCK IRRIGATION DISTRICT, a
Corporation, ASH SHEEP COMPANY, a
Corporation, E. J. McCORMICK, County
Treasurer of Treasure County, Montana,

CHARLES P. D. DONNES, H. L. HOYLMAN, JEFFREY DINSDALE, H. M. SRITE, FLOYD UNGLES, C. M. VREELAND, JOHN LIGHTBODY, ROBERT E. CLEARY, and E. P. MARSHALL,
 Defendants.

BE IT REMEMBERED that on the 13th day of September, 1917, a bill of complaint was filed herein as follows, to wit: [1*]

In the District Court of the United States in and for the District of Montana.

No. 510.

T. TOMICH, HARRY F. SCOTT, and H. MULBERGER,

Complainants,

vs.

UNION TRUST COMPANY, a Corporation, SPOKANE & EASTERN TRUST CO., a Corporation, FEDERAL LAND BANK OF SPOKANE, a Corporation, BIG HORN TULLOCK IRRIGATION DISTRICT, a Corporation, ASH SHEEP COMPANY, a Corporation, E. J. McCORMICK, County Treasurer of Treasure County, Montana, CHARLES P. D. DONNES, H. L. HOYLMAN, JEFFREY DINSDALE, H. M. SRITE. NICK TOPSICK, PETER BO-

*Page-number appearing at the foot of page of original certified Transcript of Record.

GUNONVICH, FLOYD UNGLES, C. M.
VREELAND, JOHN LIGHTBODY, ROBERT
E. CLEARY, and N. P. MARSHALL,
Defendants.

BILL OF COMPLAINT.

To the Honorable, the Judge of the District Court
of the United States in and for the District of
Montana.

T. Tomich, a citizen and resident of the State of Montana, and Harry F. Scott, a citizen and resident of the State of Wyoming, and H. Mulberger, a citizen and resident of the State of Wisconsin, suing on their own behalf and on behalf of all others similarly situated who wish to join in this suit and contribute to the expense thereof and file this, their bill against the defendants, Union Trust Co., and Spokane & Eastern Trust Co. (respectively corporations organized under the laws of the State of Washington), Federal Land Bank of Spokane, a corporation organized under the laws of the United States with its principal place of business in Spokane, Washington, Big Horn Tullock Irrigation District, a Montana corporation, Ash Sheep Company, a Montana corporation, E. J. McCormick, as County Treasurer of Treasure County, Montana, Charles P. Donnes, H. L. Hoylman, Jeffrey Dinsdale, H. M. Srite, Nick Topsick, Peter Bogunovich, Floyd Ungles, C. M. Vreeland, John Lightbody, citizens and residents of the State of Montana, Robert E. Cleary, and H. P. Marshall,

citizens and residents [2] of the State of Washington, and thereupon your orator complains and says:

First: That the matter in controversy herein exceeds exclusive of interest and costs the sum or value of \$3,000.00 and the suit is one involving in its decision a construction of several sections of the Constitution and of the statutes of the United States.

Second: That the following named defendants herein are corporations respectively organized under the laws of the states set after their respective names, to wit:

UNION TRUST COMPANY—Washington.

SPOKANE & EASTERN TRUST COMPANY—
Washington.

FEDERAL LAND BANK OF SPOKANE—
United States.

ASH SHEEP COMPANY—Montana.

E. J. McCormick is and was at the time of the commencement of this suit, County Treasurer of Treasure County, Montana.

That Bighorn Tullock Irrigation District is a corporation attempted to be created under the laws of the State of Montana, and is acting as such corporation; that Robert E. Cleary and H. P. Marshall are citizens and residents of the State of Washington; that all other defendants herein are citizens and residents of the State of Montana.

Third: That on the 26th day of June, 1919, T. Tomich was the owner in and in possession of and

that he has ever since been the owner of and in the possession of the following particularly described lands, in Treasure County, Montana, to wit:

N.W. $\frac{1}{4}$ Section 26, Township 5 N., Range 34 E., consisting of 100 acres more or less.

That on the said date Floyd Ungles was the owner of the following particularly described lands, in Treasure County, Montana, to wit:

S. $\frac{1}{2}$ S.W. $\frac{1}{4}$; S. $\frac{1}{2}$ N.W. $\frac{1}{4}$ S.W. $\frac{1}{4}$ in Section 13; S. $\frac{1}{2}$ N.E. $\frac{1}{4}$; N.E. $\frac{1}{4}$ N.E. $\frac{1}{4}$; and Lots 2 and 3 in Section 23 and Lots 5 and 6 in Section 14, all in Township 5 N., Range 34E., of the [3] Montana Meridian and consisting of 258.22 acres, more or less; that while the said Floyd Ungles was such owner, and prior to June 26, 1919, he made, executed and delivered to the said Harry F. Scott, a mortgage on the said land and that the same or a renewal thereof has not been paid or discharged, and the same now remains in full force and effect; that on the 26th day of June, 1919, W. H. Ungles was the owner of the following particularly described lands situated in the said Treasure County, to wit:

W. $\frac{1}{2}$ S.E. $\frac{1}{4}$; W. $\frac{1}{2}$ N.E. $\frac{1}{4}$; N.E. $\frac{1}{4}$ S.W. $\frac{1}{4}$; S.E. $\frac{1}{4}$; N.W. $\frac{1}{4}$; $\frac{3}{4}$ N.W. $\frac{1}{4}$ S.W. $\frac{1}{4}$ and Lot 2, all in Section 13, Township 5 N., Range 34 E., and consisting of 141.6 acres, more or less; that prior to the said 26th day of June, 1919, the said H. Mulberger or his predecessor in interest loaned to said W. H. Ungles a sum of lawful money of the United States of America and to secure the payment of said loan, said W. H. Ungles made, executed and de-

livered to the said H. Mulberger or his predecessor in interest a mortgage on said land to secure the same; that the said loan was never paid and that afterward to avoid foreclosure of the said mortgage, and to satisfy the same said W. H. Ungles made, executed and delivered to the said H. Mulberger or his predecessor in interest, a deed in due form conveying to him the said above-described land and that from and since the first day of January, 1922, the said H. Mulberger or his predecessor, has been the owner of the said particularly described land, and that he is now, such owner.

Fourth: That on or about the 26th day of June, 1919, there was filed in the office of the Clerk of the Montana Fifteenth Judicial District Court, in and for the County of Treasure, a certain paper writing described as a petition, a copy of which is hereunto annexed, marked Exhibit "A" and of this bill made a part; that the said petition prayed for the creation of an irrigation district, the same to embrace certain particularly described lands, amounting to 1,599.22 acres, and including the said lands of the complainants, and said district to be known as Bighorn Tullock Irrigation District; that thereafter such proceedings were had in the said matter that a so-called judgment or decree was made and entered on the 4th day of August, 1919, which so-called judgment or decree is by copy thereof hereunto annexed, marked Exhibit "B" and of this bill made a part.

Fifth: That commissioners of the said so-called irrigation district were [4] named, who there-

after, and acting in pursuance of such appointment, undertook to perform the functions of such commissioners and caused certain proceedings to be had whereby in the year 1919 bonds were issued covering the said district, amounting to the sum of \$75,000.00, and, that thereafter annually, excepting in the year, 1922, the said commissioners contracted indebtedness and caused to be issued warrants of the said district for the payment of the same, which said warrants aggregate the sum of \$24,458.03; that the sum realized therefrom and from the issuance of the said bonds was expended in a fruitless attempt to construct and maintain a dam across the Bighorn River, and in an attempt to construct and maintain a canal approximately two miles in length, connected therewith and in further repeated unsuccessful efforts to construct and maintain irrigation works; the said bonds issued by the said district are to the extent of approximately \$1,000 owned and held by the defendants, Union Trust Company, Spokane & Eastern Trust Co., and to the extent of \$61,000 by Robert E. Cleary and H. P. Marshall and various other parties unknown to the complainants herein, but whose names and addresses are known to the defendants, herein, Union Trust Co., and Spokane & Eastern Trust Company; that the warrants issued by the said so-called commissioners to cover indebtedness of the said District in addition to that covered by said bonds are as to a part of those issued for the years 1920, 1924 and 1925 owned and held by the defendants, Union Trust Company and Spokane & Eastern Trust Co.,

and said warrants are otherwise owned and held as the complainants are informed and believed and allege upon their information and belief by the following named defendants, to wit: C. M. Vreeland, John Lightbody, and sundry other persons to the complainants unknown; that the defendants herein, Charles P. Donnes, H. L. Hoylman, Jeffrey Dinsdale, H. M. Srite, Nick Topsick, Peter Bogunovich, Floyd Ungles and Federal Land Bank of Spokane are with the complainants the owners of the land within said district.

Sixth: That on the 26th day of June, 1919, the land owned by or mortgaged to the complainants herein together with the water rights owned and used in connection therewith and the improvements thereon were of a value of not less than \$75.00 per acre; that the said land was then under irrigation, under cultivation, was fenced and had buildings thereon; that the same was adapted to the growing of [5] sugar-beets and is in a locality where sugar-beets are grown and where there is a market for the same and in addition to the water already appropriated for the irrigation thereof there is abundant additional unappropriated water which might be appropriated for that purpose; that the amount of the taxes hereinafter mentioned as having been levied for the purpose of the said proposed improvements if regularly levied and a valid lien upon the said land, the same with the interest accrued thereon amounts to a lien thereon of more than \$75.00 an acre and more than \$120,000 for the entire district; that the said district has furnished

no water whatever for the irrigation of the said land and the same has been without irrigation since the year 1919; that the irrigation ditches and canals then in use have since become washed out or filled up by the acts of the said so-called irrigation district; the said lands have grown up in weeds, the buildings and other improvements thereon have fallen into decay, said lands have become for a large part unoccupied and have been rendered practically valueless by the acts of the said so-called irrigation district; that the improvements proposed by the said district, if made, could not possibly have increased the value of the said land in an amount exceeding \$25.00 per acre and that said assessments to pay for said proposed improvements greatly exceeded any possible increase in value of the said lands which could have taken place as a result of such improvements if they had been made.

Seventh: That annually and from year to year, excepting the year 1922, the said so-called irrigation commissioners have, beginning with the year 1920, undertaken in the manner prescribed by the said act to levy taxes upon the land within the said district for the purpose of payment and discharge of the said bonds and warrants the assessments so levied not being kept separate, and that since the year 1920, excepting the year 1922 the amount of the taxes attempted to be levied and assessed upon the said lands for the purpose of discharging said warrants exceeded \$4,890.60 for each year; that the assessed valuation of all of the said lands of the said district in any year since the year 1918 has

not exceeded the sum of \$21,965.00; that the taxes levied by the said irrigation district upon the lands within the said district, and exclusive of taxes levied for the purpose of paying interest which has accrued upon bonds issued by the said district, and exclusive of any taxes levied for the purpose of payment of any bonds, did annually, excepting the year 1920 and 1922, exceed 25% of the assessed valuation [6] of all of the lands within the said district; that no part of the said taxes levied in the said district was for the purpose of organization or for any other immediate purpose of the said act, and none of the said taxes were levied for the purpose of making or purchasing surveys, plans or specifications or for stream gauging or gathering data or to make repairs occasioned by any calamity or any other unforeseen contingency; that the taxes levied by the said district have regularly exceeded the limitation prescribed by the act, under which the said so-called district was attempted to be organized, and that the said so-called commissioners have annually filed with the Clerk of the County Commissioners of the said county a certified copy of the several resolutions, which the said so-called irrigation district had attempted to adopt for the purpose of the levying of the said taxes; that the said so-called commissioners have annually beginning with the year 1920, excepting the year 1922, furnished to the county treasurer of the said county a list of the said district lands in the said county together with the amount of taxes or assessments against the said lands for irrigation district

purposes, and that the said county treasurer has annually in the manner prescribed by the said act collected or attempted to collect said taxes; that the said county treasurer has refused to segregate the taxes levied in pursuance of the acts of the said so-called irrigation district from the taxes regularly levied for state and county purposes and at all times excepting the year 1922 has refused to receive payment of taxes regularly levied for state and county purposes (though payment of the same was annually and in due time duly tendered to the said county treasurer) without payment being also made of said taxes attempt to be levied in pursuance of the acts of the said so-called irrigation district; that with the exception of the taxes for the year 1920 the taxes attempted to be levied by the said so-called irrigation district or in pursuance of or in furtherance of its acts have not been paid and heretofore and during the year 1922 the county treasurer of the said county advertised the said lands for sale for delinquent taxes of the said so-called irrigation district and thereafter, the same was attempted to be sold by the said county treasurer and the same was bid in at such tax sale by the said County of Treasure and record of all of the said proceedings appear upon the books officially kept by the said county treasurer in the county seat of the said county. Said county treasurer threatens to and will, unless enjoined, execute a tax deed to the purchaser for each of the [7] tracts owned by complainants, and they and each of them will be recorded in the office of the county

clerk and recorder of the said county; proceedings so had and taken with reference to the attempted tax sale of the said property casts a cloud upon the title to the said lands and the whole thereof and the said further proceedings including the issuance of the said tax deeds and the recording thereof will cast a further cloud upon the said title.

Eighth: That the proceedings for the organization of the said district were not sufficient to give jurisdiction to the court for that purpose; that the said petition wholly failed to describe generally or at all the character of the works, water rights, canals and other property proposed to be acquired or constructed for irrigation purposes, in the proposed district; that the said petition falsely stated inferentially that such works proposed to be constructed was the extension of a canal which might be constructed at an expense not exceeding \$3,000.00, while as a matter of fact the irrigation works actually proposed to be constructed was besides the said canal a dam across the Bighorn River, costing not less than \$72,000.00; that no notice sufficient to give the Court jurisdiction was given of the said proceedings, the only notice given being a publication of the said insufficient petition and notice that the said petition would be heard at a certain time and place.

Ninth: That on the 26th day of June, 1919, there was in existence a system of irrigation by which water was supplied to all of the lands owned by or mortgaged to the complainants; that the said lands and all of the said lands alleged to be owned by or

mortgaged to the said complainants were then under irrigation, and there were water rights appurtenant thereto; that the said complainants did not and no one of them did consent to the inclusion of their said lands or the land mortgaged to them within the said district; they never at any time participated in the organization of the said district, and at all times opposed the same and opposed the inclusion of their said lands within the said district.

Tenth: That said Chapter 146 of the Montana Eleventh Session Laws is violative of the due process of law clause of the 14th Amendment to the Constitution of the United States in that it permits that assessments may be levied for special improvements in irrigation districts in excess of any benefits which may [8] or might possibly accrue as a result of such special improvements and the said chapter does not limit the assessments which may be levied by any irrigation district to the value of the benefits which may accrue as a result thereof; that certain validation proceedings were attempted to be had whereby said proceedings for the issuance of the said bonds were sought in pursuance of Section 41 of Chapter 146 of the Montana Session Laws to be confirmed and validated, which said proceedings are by copy thereof hereunto annexed marked Exhibit "C," and hereby made a part of this bill; that the said proceedings were void and without any force or effect and that the said acts of the said commissioner and all of their herein mentioned acts were void and without any force or

effect, for the reason that the Court in the said proceedings was acting without jurisdiction, the land of said complainants, or the land mortgaged to them were not properly included within the said district and the said so-called irrigation district and the said Court had no jurisdiction, power or authority to include such lands in the said irrigation district, and said Court had not power or authority to proceed in the said validation proceedings for the further reason that the said Section 41 is violative of the due process of law clause of the 14th Article of Amendment and of Section 2, Article 3, and paragraph second of Article 6 of the Constitution of the United States, and is in conflict with Sections 24 and 28 of the Judicial Code of the United States, in that the said proceedings provided for by the said Section 41 may, and in this instance did, involve a determination of whether certain proceedings constituted due process of law and whether by reason thereof they were violative of the Federal Constitution and involved a question arising under the Constitution of the United States; that the amount involved in the said proceeding as it affected each of the complainants herein exceeded the sum or value of \$3,000.00, exclusive of interest and costs, and was within the jurisdiction conferred by the Federal Constitution and laws on the United States District Court, and that such proceedings could not be brought in the District Court of the United States or removed thereto under the terms of the said section as construed by the highest court of the State of Montana, and that said

Section 41 [9] as so construed infringed the judicial power of the United States and deprived the District Court of the United States of jurisdiction given it by the Constitution and laws of the United States.

Eleventh: Complainants allege upon their information and belief that all of the facts hereinbefore alleged with reference to the insufficiency of the petition and of the notice of the formation of the said district; that the lands of the complainants were under irrigation prior thereto, and they did not consent to the inclusion of their lands in the said district; that the said bonds as issued and said assessments made each exceeded the benefits which could possibly accrue to said lands as a result of the said proposed improvements and were confiscatory of the lands of the complainants; that the said taxes levied exceeded the maximum allowed by law, and all other facts herein alleged with reference to the illegality of the issuance of the said bonds and warrants and of the levy of the said taxes were known to all of the defendants herein alleged to be owners or holders of the said bonds or warrants and the said defendants and each of them at the said times had notice of all of such facts.

Twelfth: That all of the proceedings had and all of the papers filed in the said Fifteenth Judicial District Court in the matter with the exception of an undertaking filed with the said petition on June 26, 1919, a map filed in said court on August 4, 1919, bonds of various so-called irrigation district commissioners, petitions for and orders appointing

them and a petition filed December 9, 1919, but not acted upon and excepting papers which are by copies hereunto annexed as Exhibits "A" to "C," inclusive, are by copy thereof annexed, marked Exhibit "D," and of this bill made a part, and that no other proceedings of any kind or character were had or taken in the said Fifteenth Judicial District Court in said matter and no paper filed therein, except those mentioned and those hereunto annexed as exhibits.

In consideration whereof and inasmuch as the complainants have no remedy at law and are only relievable in equity, and to the end that the complainants may have the relief which they can only obtain in a court of equity, and to the end that the said defendants, and each of them, may answer herein, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainants, [10] who now pray the Court that a decree be entered herein:

First: That the cloud caused by the recording of the said irrigation tax proceedings in the office of the county treasurer be removed, and the same decreed to be no cloud upon the title of the complainants in and to the said lands.

Second: That the defendant, E. J. McCormick, as county treasurer, be enjoined and restrained from issuing any tax deeds in pursuance of any tax sale made of the said lands, or any part thereof, for any of the said delinquent irrigation district taxes.

Third: That said Chapter 146 be declared to be violative of the due process of law clause of 14th

Amendment of the Federal Constitution and that Section 41 of Chapter 146 of the Session Laws of the Montana Eleventh Legislative Assembly be declared to be violative of the Constitution of the United States and in conflict with Sections 24 and 28 of the Judicial Code of the United States and void and without any force or effect.

Fourth: That the so-called judgment and decree of the Montana 15th Judicial District Court in and for the county of Treasure dated the 17th day of November, 1919, in the matter of the said Irrigation District proceedings, be declared to be in excess of the jurisdiction of the said court and without force or effect.

Fifth: That complainants have such other and further relief in the premises as equity and good conscience may require and for costs of suit.

Complainants pray for general relief.

May it please your Honor to grant unto *this* complainants a writ of subpoena to be directed to the said Union Trust Company, a corporation; Spokane & Eastern Trust Company, a corporation; Federal Land Bank of Spokane, a corporation; Big Horn Tullock Irrigation District, a corporation; Ash Sheep Company, a corporation; E. J. McCormick, as county treasurer of Treasure County, Montana; Charles P. Donnes, H. L. Hoylman, Jeffrey Dinsdale, H. M. Srite, Nick Topsick, Peter Bogunovich, Floyd Ungles, C. M. Vreeland, John Lightbody, Robert E. Cleary and H. P. Marshall, and each of them, thereby commanding them, and each of them, at a certain time, and under a certain

penalty, therein to be limited, personally to appear before this Honorable Court and then and there full, true and perfect answer make.

W. N. WAUGH,
JOHN A. SHELTON,
Solicitors for Complainants. [11]

EXHIBIT "A."

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Establishment and Organization of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA.

PETITION.

To the Honorable District Court in and for the County of Treasure, State of Montana.

The undersigned holders of title or evidence of title to lands situate in the County of Treasure, State of Montana, hereinafter described, susceptible of irrigation from the same general source and by the same system of canals and works and included in the hereinafter proposed Irrigation District, hereby propose and petition for the establishment and organization of an Irrigation District pursuant to the provisions of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and Acts amendatory thereof

and supplementary thereto and your petitioners hereby respectfully show to the Court:

I.

That your petitioners represent and constitute a majority in number of the holders of title or evidence of title to lands hereinafter set forth and included in said proposed Irrigation District. That they also represent a majority of the acreage of said lands within the proposed Irrigation District, and that all of said lands are susceptible to irrigation from the same source and by the same general system of works.

II.

That the name suggested for the proposed Irrigation District is Big Horn Tullock Irrigation District.

III.

That the following is a general description of the lands to be included within the said proposed Irrigation District, aggregating approximately 1650 acres, as follows: The Northwest quarter of Section Two in Township Four North of Range Thirty-four East; Sections Thirteen, Twenty-three, Twenty-seven and Thirty-four, and the Southeast quarter of Section Fourteen, Northwest quarter of Section Twenty-four, [12] South half section Twenty-two, Northwest quarter of Section Twenty-six, in Township Five North of Range Thirty-four East: All being in Treasure County, Montana.

That the following are the names of the holders of title or evidence of title to the lands within the proposed irrigation district, ascertained in the man-

ner as provided by law, together with a description of the land and the approximate acreage of land owned or held by each of said owners or holders of title or evidence of title and the respective post-office addresses of each thereof as far as known to your petitioners, said description of land and the approximate acreage after each name set forth being and meaning to include only those subdivisions or portions of subdivisions as can be irrigated from the same general source and by the same general system of works, which are hereinafter described.

THE FOLLOWING LANDS ALL BEING IN
RANGE THIRTY-FOUR EAST.

Name and Address.	Description	Sec.	Twp.	Acres.
Charles P. Donnes, Bighorn, Montana	Lots 4 and 5	2	4	80
Ash Sheep Co., Bighorn, Montana	Lots 1, 8, 9, 12	2	4	
	SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	22	5	
	S. $\frac{1}{2}$ SW. $\frac{1}{4}$	23	5	
	NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	27	5	
	SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$			
	NE. $\frac{1}{4}$, Lts. 1, 3,	27	5	
	N. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$	27	5	455
H. L. Hoylman, Bighorn, Montana	Lot 5	34	5	
	Lots 2 and 3	12	4	50

Name and Address.	Description	Sec.	Twp.	Acres.
C. Owens, Bighorn, Montana	Lots 1, 3, 4, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ E. $\frac{1}{2}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	34 27 34 27	5 5 5 5	
F. E. Ungles, Bighorn, Montana	NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$		5 5 5	
Jeffrey Dinsdale, Bighorn, Montana	NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ Lots 6		5 5 5 5	
3] Ellie Smith, Bighorn, Montana	S. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	5	20
J. M. Srite, Bighorn, Montana	Lot 11	28	5	20
Wick Topsick, Bighorn, Montana	Lot 2	27	5	14
J. Y. Cook, Bighorn, Montana	Lots 6 and 7	22	5	50
Peter Bogunovich, Bighorn, Montana	Part of N. $\frac{1}{2}$ SW. $\frac{1}{4}$	26	5	3
Tomich, Butte, Montana	NW. $\frac{1}{4}$	26	5	100
Wm. Badlands, Bighorn, Montana	Lot 5 Lot 5	22 23	5 5	

Name and Address.	Description.	Sec.	Twp.	Acres.
John Topsick, Bighorn, Montana	Part of SE. $\frac{1}{4}$	23	5	5
Floyd Ungles, Bighorn, Montana	S. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	13	5	
	S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ Ne. $\frac{1}{4}$ Pt 2, 3	23	5	240
	Lots 5 and 6	14	5	
J. W. McCoy, Bighorn, Montana	Part of NW. $\frac{1}{4}$	24	5	40
W. H. Ungles, Bighorn, Montana	W. $\frac{1}{2}$ SE. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, $\frac{3}{4}$ of NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Lot 2	13	5	165

IV.

That the source from which the lands within the proposed Irrigation District are to be irrigated is from waters to be taken from the Big Horn River and diverted from the east bank of said river, in Section Twenty-two, Township Four North of Range Thirty-four East, and to be conveyed through an irrigation ditch or canal commencing at said point of diversion and extending in a northeasterly direction through sections Fifteen, Ten, Three and Two, Township Four North, Range Thirty-four East, and through Sections Thirty-four, Twenty-seven, Twenty-six, Twenty-three, Twenty-four and Thirteen, in Township Five North of Range Thirty-four East.

V.

That your petitioners present and file herewith a map or plat of the proposed irrigation district on which is shown the line of said proposed canal and [14] lands embraced within said proposed irrigation district, hereto attached and marked Exhibit "A."

VI.

That your petitioners also file herewith an undertaking to be approved by this Honorable Court or the Judge thereof, conditioned that your petitioners shall well and truly pay or cause to be paid all of the costs in and to proceedings thereunder preliminary to the organization of said proposed irrigation district hereby petitioned for in the event that the said organization shall not be effected.

WHEREFORE your petitioners pray that the lands *embrace* within the proposed irrigation district hereinabove described, be created and organized into an irrigation district to be known as the Big Horn-Tullock Irrigation District in accordance with, and pursuant to the provisions of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and Acts supplemental thereto and amendatory thereof, and for such other and further relief as to the Court may seem proper. [15]

Petitioners.	Postoffice Address.
F. C. OWENS	Big Horn, Montana.
YEGEN BROS.	Billings, Montana.
By C. Yegen	
ASH SHEEP CO.,	
By L. S. Perkins	Bighorn, Montana.
W. E. UNGLES	“ “ “
NICK TOPSICK	“ “ “
FLOYD UNGLES	“ “ “
CHARLES BADLANDS	“ “ “
H. L. HOYLMAN	“ “ “
CHAS. P. DONNES	“ “ “
JEFFREY DINSDALE	“ “ “
W. H. UNGLES	“ “ “
J. E. DINSDALE	“ “ “
PETER BOGUNOVICH	“ “ “
D. Y. COOK	“ “ “

[16]

State of Montana,
County of Treasure,—ss.

F. C. Owens, of lawful age, being first duly sworn, deposes and says:

That he is one of the petitioners herein and that he has read the above and foregoing petition and knows the contents thereof, and that the matters and things therein stated are true except as to those matters stated upon information and belief and as to those he believes them to be true. That he makes this verification on his own behalf and on the behalf of the other petitioners herein.

F. C. OWENS.

Subscribed and sworn to before me this 25th day
of June, 1919.

[Notarial Seal] HENRY V. BEEMAN,
Notary Public for the State of Montana, Residing
at Forsyth, Montana.

My commission expires April 4, 1922.

[Endorsed]: Filed June 26, 1919. J. D. Clark,
Clerk. By F. M. Clark, Deputy. [17]

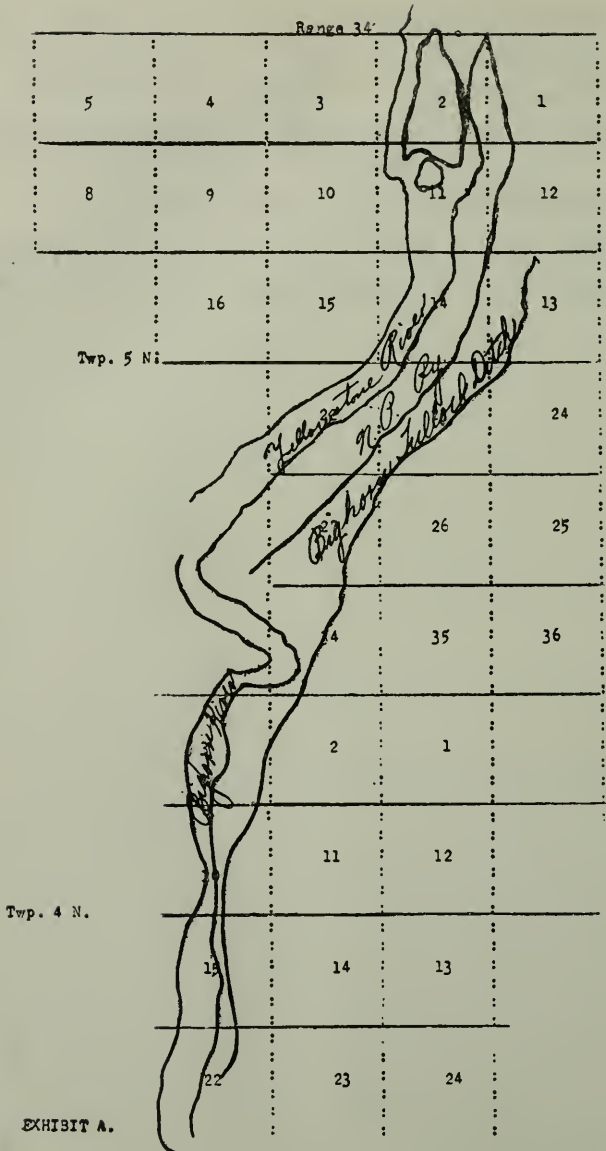


EXHIBIT "D."

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Establishment and Organization of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA.

ORDER.

Upon reading and filing the petition herein, it is hereby ordered that a hearing on said petition be had and held before the Court on the 4th day of August, 1919, at the hour of ten o'clock A. M. of said day in the courtroom in said Treasure County, Montana, at which time and place all persons interested, whose lands or rights may be damaged or benefitted by the organization of the proposed Irrigation District or irrigation works or improvements therein to be acquired or constructed as set forth in the petition herein filed, may appear and contest the necessity or utility of the proposed irrigation District or any part thereof.

And it is further ordered that the Clerk of this court shall cause to be published at least once a week for two successive calendar weeks in the "Hysham Echo," a weekly newspaper of general circulation published in said county of Treasure, a copy of the petition filed herein together with a notice stating the time and place fixed by this Court

in this order for the hearing of said petition and that the Clerk of this court shall, within three days after the first publication of said notice aforesaid, mail a copy of said petition and notice to each non-resident holder of title or evidence of title to the lands within the proposed Irrigation District as set forth in the petition herein whose postoffice address is stated in said petition.

Done in open court this 26th day of June, 1919.

GEO. P. JONES,

Judge.

[Endorsed]: Filed June 26, 1919. J. D. Clark, Clerk of Court. By F. M. Clark, Deputy. [19]

EXHIBIT "D" (Continued).

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Establishment and Organization of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE, MONTANA.

ORDER.

In the above-entitled matter it is by the Court hereby ORDERED:

That the following named persons be and are hereby appointed Commissioners in and for the Big Horn-Tullock Irrigation District, to wit: In and for Division No. 1 of said District, L. S. Perkins; in and for Division No. 2 of said District, Jeffrey

Dinsdale; in and for Division No. 3 of said District, Floyd Ungles; and that said Commissioners shall upon qualifying as by law required, hold their respective offices for the term provided by law, and until their successors are elected and qualified, and they shall be charged with the duties and vested with the powers provided by law.

Done in open court this 4th day of August, 1919.

DANIEL L. OHERN,

Judge of the District Court, Presiding.

[Endorsed]: Filed Aug. 4, 1919. J. D. Clark, Clerk. By F. M. Clark, Deputy. [20]

EXHIBIT "B."

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Establishment and Organization of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA.

DECREE.

On this 4th day of August, 1919, the same being a judicial day of the regular July, 1919, Term of the above-entitled court, this matter came on regularly for hearing upon the petition of certain holders of title or evidence of title to lands situate in the County of Treasure, State of Montana, whose names are set forth in said petition which was heretofore filed in this court, praying that the establishment

and organization of an Irrigation District in accordance with the provisions of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and Acts amendatory thereof and supplemental thereto; and said petitioners appearing by counsel and the Court having heard the testimony and the arguments of counsel, and being fully advised in the premises, it is by the Court found and determined:

1. That the petition herein filed has been duly and properly signed by a majority in number of the holders of title or evidence of title to the lands within the proposed Irrigation District, and that said petitioners represent a majority in acreage of the lands included therein.

2. That said petition sets forth a general description of the lands to be included within said proposed Irrigation District, the names of the holders of title or evidence of title to the lands therein, together with the postoffice addresses of each and every nonresident holder of title or evidence of title to lands within said proposed Irrigation District, the general source from which said lands are to be irrigated, and the character of the works, water rights, canals and other property to be acquired and constructed for Irrigation purposes in said proposed District.

3. That all of the lands set forth and described in said petition and to be included in said Irrigation District are situated in said county of Treasure, State of Montana. [21]

4. That the lands to be included in said Irrigation District are susceptible to irrigation from the same source and by the same general system of works.

5. That said petition sets forth the name suggested for the proposed Irrigation District, and that said petition is accompanied by a map or plat of the proposed Irrigation District, and that there has been filed therewith, a good and sufficient bond and undertaking, duly approved by the Court, as by law required, to pay all the costs in and about the proceedings preliminary to the organization of the District, in the event said organization is not affected.

6. That due and legal notice of the hearing upon said petition as set forth by the order of this Court herein made and entered has been given as by law required, as shown by the affidavit, and certificate of publication and service filed herein, which said notice and service thereof are by Court hereby approved.

7. That each and all of the orders of this Court and the provisions of Sections One, Two, Three and Four of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and Acts amendatory thereof and supplemental thereto, have been duly complied with.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED BY THIS COURT, that said petition be allowed and that in accordance therewith an Irrigation District be and it is hereby established and designated as the Big Horn-Tul-

lock Irrigation District, in accordance with and pursuant to the provisions of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and that said District be composed of and include the following described lands situated in the said county of Treasure, State of Montana, to wit: [22]

LANDS SITUATE IN TOWNSHIP FOUR
NORTH, RANGE THIRTY-FOUR EAST.

Name and Address.	Description.	Sec.	Acres Irrigable.
Ash Sheep Co.,			
Big Horn, Montana	Part of N. ½ Lot 12	2	3.4
	Part of E. ½ Lot 1	3	7
	Part of E. ½ Lot 8	3	14.7
	Part of N. ½ Lot 9	3	10.2
Charles P. Donnes,			
Big Horn, Montana	Lot 4	2	45
	Lot 5	2	27
H. L. Hoylman,			
Big Horn, Montana	Part of W. ½ Lot 2	2	5
	Lot 3	2	38
P. Mauro,			
Big Horn, Montana	Part of N. ½ Lot 6	2	4

LANDS SITUATE IN TOWNSHIP FIVE
NORTH, RANGE THIRTY-FOUR EAST.

Name and Address.	Description	Acres	
		Sec.	Irrigable.
F. C. Owens,			
Big Horn, Montana	Part of SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	27	19.9
	Part of W. $\frac{1}{2}$ NE. $\frac{1}{4}$		
	NE. $\frac{1}{4}$	34	4
	Part of W. $\frac{1}{2}$ Lot 5	34	7.6
	Part of W. $\frac{1}{2}$ SE. $\frac{1}{4}$		
	NE. $\frac{1}{4}$	34	6.5
	Part of Lot 4	34	26.3
	SW. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	40
	Part of N. $\frac{1}{2}$ Lot 1	34	17.2
	Part of N. E. $\frac{1}{4}$ Lot 3	34	3
W. E. Ungles,			
Big Horn, Montana	NW. $\frac{1}{4}$ NE. $\frac{1}{4}$	34	40
	NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	34	33.6
Jeffrey Dinsdale,			
Big Horn, Montana	N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	19.5
	NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Less		
	N. P. Right of Way	27	35
	SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	27	40
	SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	40
	Part of Lot 6	28	25.3
H. M. Srite,			
Big Horn, Montana	Lot 11	28	16
	Lot 1	33	1

Name and Address.	Description	Acres	
		Sec.	Irrigable.
T. Tomich, Butte, Montana	Part of NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	26	24.2
	NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	26	40
	Part of N. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	26	5.7
	Part of SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	26	27
Nellie Smith, Big Horn, Montana	S. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	20
Peter Bogunovich, Big Horn, Montana	Part of NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ lying below irrigation canal	26	3.8
[23] Ash Sheep Co., Big Horn, Montana	Part of NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	27	18.5
	Part of NW. $\frac{1}{4}$ NE. $\frac{1}{4}$	27	32.8
	NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	27	38.5
	SE. $\frac{1}{4}$ NE. $\frac{1}{4}$	27	39.9
	SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ less N. P. right of way	27	35.9
	SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less N. P. right of way	27	34.8
	Lot 3	27	37.5
	NE. $\frac{1}{4}$ SE. $\frac{1}{4}$	27	39
	NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	27	40

Name and Address.	Description	Sec.	Acres Irrigable.
	Part of SE. $\frac{1}{4}$ SW $\frac{1}{4}$ West of Irrigation Ditch	23	20.8
	SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ less N. P. Right of way	23	36.4
	SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ less N. P. Right of way	22	32
Nick Topsick, Big Horn, Montana	Lot 2	27	13.5
D. Y. Cook, Big Horn, Montana	Lot 7 Part of Lot 6	22 22	25 5
Charles Badlands, Big Horn, Montana	Part of Lot 5 Part of Lot 5	23 22	21.3 5.6
W. E. Ungles, Big Horn, Montana	NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less N. P. Right of way	23	29.4
John Topsick, Big Horn, Montana	Part of NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ lying Northwest of Irrigation Ditch	23	6.5
Floyd Ungles, Big Horn, Montana	Part of W. $\frac{1}{2}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ lying west of Irrigation Canal	13	1.25
	SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	13	37
	SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ less N. P. Right of Way	13	35.9
	Part of S. $\frac{1}{2}$ S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	13	8.5

Name and Address.	Description	Sec.	Acres Irrigable.
	Part of Lot 5	14	8
	Lot 6 Less N. P. Right of Way	14	38.32
	NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ Less N. P. Right of Way	23	34.8
	Lot 2 Less N. P. Right of Way	23	17.85
	SE. $\frac{1}{4}$ NE. $\frac{1}{4}$	23	37.8
	SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ Less N. P. Right of Way	23	33.8
	Part of Lot 3	23	5
J. W. McCoy, Big Horn, Montana	Part of NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	24	1.4
	Part of NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ West of Irrigation Canal	24	29
	Part of W. $\frac{1}{2}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ lying West of Irrigation Canal	24	4.8
[24]			
W. H. Ungles, Big Horn, Montana	Part of W. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ lying West of Irrigation Canal	13	8.5
	Part of NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ Less N. P. Right of Way	13	24
	Part of SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ West of Canal	13	5.8

Name and Address.	Description	Sec.	Irrigable.	Acres
	SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ Less			
	N. P. Right of Way	13		35.1
	Part of South Half Lot			
	2	13		3.3
	Part of W. $\frac{1}{4}$ NW. $\frac{1}{4}$			
	SE. $\frac{1}{4}$ W. of Canal	13		3.4
	NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ Less N. P.			
	Right of Way	13		38.5
	Part of NW. $\frac{1}{4}$ SW. $\frac{1}{4}$			
	Less N. P. Right of			
	Way	13		23

It is intended, AND IT IS HEREBY ORDERED, that only such portions of the above-described parcels of land as lie and are situated under the proposed Irrigation Canal of the said Big Horn-Tullock Irrigation District and which are susceptible of irrigation from said irrigation system be and are hereby included in said Irrigation District, said Irrigation District consisting of and including within its boundaries, an aggregate of 1599.22 acres of irrigable land.

IT IS FURTHER ORDERED AND DECREED that the said Irrigation District be and the same is hereby divided into three divisions to be known as Division No. 1, Division No. 2 and Division No. 3, said Divisions respectively to be composed of and to include the lands in said District hereinafter described, to wit:

DIVISION No. 1 to consist of all the lands included in said District and situated and lying

within Sections Two and Three in Township Four North of Range Thirty-four East, and within Sections Thirty-three and Thirty-four in Township Five North of Range Thirty-four East.

DIVISION No. 2 to contain all the lands included in said District situate and lying within Sections Twenty-six, Twenty-seven and Twenty-eight of Township Five North of Range Thirty-four East.

DIVISION No. 3 to contain all the lands included in said District situate and lying within Sections Thirteen, Fourteen, Twenty-two, Twenty-three and Twenty-four in Township Five North of Range Thirty-four East.

Done in open court this 4th day of August, 1919.

[25]

DANIEL L. OHERN,

Judge of the District Court Presiding.

[Endorsed]: Filed Aug. 4, 1919. J. D. Clark, Clerk. By F. M. Clark, Deputy. [26]

EXHIBIT "C."

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Issuance of Seventy-five Thousand Dollars of the Coupon Bonds of the
**BIG HORN-TULLOCK IRRIGATION
 DISTRICT OF TREASURE COUNTY,
 MONTANA.**

PETITION.

Come now L. S. Perkins, Floyd Ungles and Jeffrey Dinsdale, as Commissioners of the Big Horn-Tullock Irrigation District of Treasure County, Montana, and respectfully represent to the Court:

I.

That on the fourth day of August, 1919, by an order and decree of the District Court of the Fifteenth Judicial District of the State of Montana, in and for the county of Treasure, all of the lands and territory embraced within and described by said Decree, were created and organized as an Irrigation District of the county of Treasure and State of Montana, pursuant to the terms and provisions of the statutes of the State of Montana, in such case made and provided and particularly Chapter 146 of the Laws of the Eleventh Legislative Assembly of the State of Montana, and Acts amendatory thereof and supplementary thereto.

II.

That your petitioners are the duly elected qualified and acting Commissioners of the said Big Horn-Tullock Irrigation District.

III.

That heretofore such Commissioners have formulated and adopted a general plan for the irrigation and reclamation of said lands embraced within the said Irrigation District, and for the acquiring and furnishing of a water supply for the land owners

within said District, and for the purchase, construction and acquisition of such water right, property, canals, ditches, works and equipment, as may be necessary for such purpose; and that said Board of Commissioners have heretofore caused examinations, plans and estimates to be made as were necessary to demonstrate the practicability of such general plan for the irrigation and reclamation of all of the lands within said Irrigation [27] District for the purpose of furnishing a proper basis for estimating the cost of carrying out such general plan; all of such surveys, maps, plans, reports and estimates being made under the direction and supervision of an Irrigation Engineer of well known competency and standing, all of the same being duly and regularly certified by said Engineer, (1) as by law required; whereupon said Board of Commissioners of said Big Horn-Tullock Irrigation District did now proceed to and (2) did determine the amount of money necessary to be raised for the acquiring by purchase or otherwise, and for the construction of said proposed water rights, canals, ditches, irrigation works and property to be Seventy-five Thousand Dollars, and did within ten days thereafter notify all persons and corporations, holders of title or evidence of title within the said District as by law required, of the filing of said report by said engineer, and the action and determination of said Board of Commissioners as to the amount of money necessary to be raised for such purposes.

IV.

That thereafter and on the twentieth day of October, 1919, certain land owners, holders of title or evidence of title to lands within the said District, constituting more than a majority in number and in acreage, filed with the Secretary of the Board of Commissioners of said District, your petitioners herein, for their consideration and for their action thereupon as provided by law, a petition praying that your petitioners as such Board of Commissioners cause to be issued the negotiable coupon bonds of said District in the sum of Seventy-five Thousand Dollars, same to run for a period not longer than thirty years from their date, said bonds to be issued in manner and form as the said Board of Commissioners deem for the best interest of said District and the land owners therein, said bonds and proceeds thereof to be used for acquiring by purchase or otherwise, all such water rights, canals, ditches, irrigation works, and property, and the construction of additional works and structures as may be necessary for the proper irrigation and reclamation of the lands within said District, all of which more fully appears by the certified copy of said petition herein referred to, which is hereto annexed and made a part thereof, and marked Exhibit "A."

V.

That upon the filing of said petition, your petitioners, as such Board of Commissioners, being in regular sessions assembled, did on the twenty-second day of [28] October, 1919, after carefully

examining and considering said petition determine that said petition was signed by more than a majority in number and acreage of the holder of title or evidence of title to lands *embrace* within said district, and that the same was in all respects in conformity to law and on said twenty-second day of October, 1919, your petitioners, as such Board of Commissioners, did authorize and direct the issuance of the bonds of said Irrigation District in the sum and for the purposes specified in said petition, and did fix the date, number, denomination and maturity of said bonds and did specify the rate of interest thereon, and did designate the place of payment of said bonds and interest coupons attached thereto, and prescribed the form and details of said bonds and interest coupons to be attached thereto, and did provide for a levy of special tax or assessment as provided by law, and did provide for instituting proceedings in the proper court for the confirmation of said bonds; all of which more fully appears by the certified copy of the order and resolutions hereinabove referred, which is hereto attached and made a part hereof, and marked Exhibit "B."

VI.

That this petition is filed and presented by your petitioners for the purpose of obtaining a finding and determination of this Court as to whether the provisions and requirements of law and particularly of the Acts hereinabove referred to have been complied with, and to determine the regularity, legality and validity of said proceedings preliminary and relative to the issuance of said bonds, and the levy

of the special tax or assessment for the payment of the principal and interest of the said bonds, as provided for by said proceedings and the legality and validity of said bonds and special tax, and for the purpose of obtaining an order, judgment and decree of this court, ratifying, approving and confirming said proceedings and ratifying, approving and confirming said bonds and the special tax or assessment levied by said proceedings for the purposes hereinabove set forth.

WHEREFORE, your petitioners, as such Board of Commissioners, respectfully pray the Court that upon the filing hereof with the Clerk of this court, the Judge of this court shall enter an order herein, setting this matter for hearing as by law required, and shall order the Clerk of this court to cause notice of the filing of said petition and the date of hearing thereof by publication of a notice at least once a week for two calendar weeks, in a newspaper published and of General circulation [29] in the county where the office of the said Board of Commissioners is situate, to wit, Treasure County, Montana, and also by posting a written notice in at least three public places in each of the divisions of said District, in manner as provided by law, and that upon said hearing the Court shall find and determine if the requirements of law, in such case made and provided, have been complied with, and shall examine and determine, and by a suitable and proper judgment and decree declare the regularity, legality and validity of the proceedings had by your petitioners, as such Board of Commissioners,

preliminary to the issuance of said bonds and to the levy and assessment of said special tax or assessment, for the payment of principal and interest of said bonds, and determine the legality and validity of said bonds, and said special tax as a whole, and thus will your petitioners ever pray.

L. S. PERKINS,
 FLOYD UNGLES,
 JEFFREY DINSDALE,
 Petitioners.

By H. V. BEEMAN,
 Their Attorney.

State of Montana,
 County of Treasure,—ss.

L. S. Perkins, Floyd Ungles and Jeffrey Dinsdale, of lawful age, being first duly sworn, upon oath, each deposes and says:

That they are the petitioners named in the foregoing petition and are the duly appointed, qualified and acting members of the Board of Commissioners of the Big Horn-Tullock Irrigation District of the County of Treasure, Montana; and that they have read the foregoing petition and know the contents thereof, and that the matters and things therein stated and set forth are true to the personal knowledge of the affiants, and that said petition contains, among other things, a full, true and correct copy of the several petitions, orders, resolutions and proceedings therein set forth and referred to.

L. S. PERKINS. [30]
 FLOYD UNGLES.
 JEFFREY DINSDALE.

Subscribed and sworn to before me this 22d day of October, 1919.

[Notarial Seal] C. M. VREELAND,
Notary Public for the State of Montana, Residing
at Big Horn, Montana.

My commission expires Apr. 29, 1922. [31]

EXHIBIT "A."

To the Commissioners of the Big Horn Tullock Irrigation District, Treasure County, Montana.

Gentlemen: We, the undersigned, being a majority in numbers of the holders of title, or evidence of title to the lands embraced within the Big Horn Tullock Irrigation District of the County of Treasure, State of Montana, and also representing a majority in acreage of the lands embraced therein,

DO RESPECTIVELY PETITION YOUR
BOARD:

THAT WHEREAS, the said Board of Commissioners have formulated a plan for the reclamation and irrigation of the lands included within said district, and have caused accurate surveys, examinations and plans to be made, demonstrating the practicability of such plan of reclamation and irrigation in manner and form as provided by law, and under the direction and supervision of an irrigation engineer of well known standing and competency, and have in manner and form as by law required, in regular meeting assembled, and after report of said engineer had been filed with the Board of Commissioners, determined and ascer-

tained that the amount of money necessary to be raised for the construction and completion of the necessary irrigation system for the reclamation and irrigation of said lands in the sum of Seventy-five thousand and no/100 (\$75,000.00) Dollars.

NOW, THEREFORE, we, the undersigned, owners of title or evidence of title, as aforesaid, do respectfully petition you, the said Board of Commissioners that you do cause to be issued in manner and form as provided by law, the negotiable coupon bonds of the said Big Horn-Tullock Irrigation District in the aggregate sum of Seventy-five Thousand and no/100 (\$75,000.00) Dollars, which said bonds shall run for a period of not later than thirty (30) years from their date, and may contain clauses providing for prior redemption, and payment in whole or in part at the option of the Board of Commissioners of said District on any interest payment date, after five (5) years from their date, in such manner and form and at such time and in sums as may in the opinion of the said Board of Commissioners appear to be to the best interest of the District, which said bonds shall bear interest from their [32] date until paid at the rate not to exceed six (6) per cent per annum, payable annually or semi-annually, the installments of interest to be the date of maturity of principal of said bonds to be evidenced by appropriate coupons attached to each bond, said bonds and interest coupons to be payable at such place or places as the Board of Commissioners of said District shall prescribe, or if in the opinion of the said Board of Commission-

ers it shall be to the best interests of said District and the people thereof, said bonds to be issued to mature serially at such time and in such amounts as said Board of Commissioners shall decide. Said bonds to be issued in such denomination or denominations, and such form as the Board of Commissioners shall prescribe, and to be duly executed as by law required; the said Board of Commissioners to provide for the registration of said bonds, if in their discretion it shall appear to be to the best interests of the District, such bonds to be lien upon all of the lands originally or at any time included within said District, said bonds and the special tax or assessment for the payment of interest thereon, and the principal of said bonds to constitute a first, prior lien on the lands embraced within said District, and upon which the same may be levied, with like force and effect as taxes levied for State and county purposes.

We do further petition you, the said Board of Commissioners, that after the issuance of said bonds, and after the confirmation by the District Court as provided by law, that said bonds shall be negotiated and sold under and by direction of the Board of Commissioners in manner and form as provided by law, or issued in payment of the construction and completion of the irrigation system of the District in accordance with the plans of irrigation and reclamation adopted by your said Board, as in the discretion of the Board of Commissioners may appear to the best interests of said District and the people thereof, and we do hereby

ratify and confirm this bond issue hereby petitioned for and the special tax or assessments to be levied for the purpose of paying principal and interest thereon.

IN WITNESS THEREOF, We have hereunto set our hands at Big Horn, Montana, this 20th day of October, 1919.

W. E. UNGLES Big Horn, Montana.

FLOYD UNGLES Big Horn, Montana.

[33]

JÉFFREY DINSDALE Big Horn, Montana.

W. M. UNGLES Big Horn, Montana.

C. BADLANDS Big Horn, Montana.

J. E. DINSDALE Big Horn, Montana.

CHAS. T. DONNES Big Horn, Montana.

D. Y. COOK Big Horn, Montana.

JOHN TOPSICK Big Horn, Montana.

NELLIE SMITH and

ROBT. L. SMITH Big Horn, Montana.

F. C. OWENS Big Horn, Montana.

PASCUALE MAURO Big Horn, Montana.

H. L. HOYLMAN Big Horn, Montana.

J. W. McCOY Big Horn, Montana.

State of Montana,

County of Treasure,—ss.

W. E. Ungles, of lawful age, being first duly sworn, upon oath deposes and says:

That he is well and intimately acquainted with each and all of the foregoing petitioners, and particularly acquainted with the handwriting of each of them, and that he knows of his own personal knowledge that the foregoing signatures are the

true and genuine signatures of the said petitioners and each of them. [34]

W. E. UNGLES.

Subscribed and sworn to before me this 20th day of October, 1919.

[Seal]

C. M. VREELAND,

Notary Public for the State of Montana at Big Horn, Treasure County, Montana.

My commission expires April 29, 1922. [35]

EXHIBIT "D."

Big Horn, Montana, October 22, 1919.

The Board of Commissioners of the Big Horn-Tullock Irrigation District in regular session.

Present: Jeffrey Dinsdale, President.

Floyd Ungles, Commissioner.

L. S. Perkins, Commissioner.

W. E. Ungles, Secretary.

The minutes of the *proceeding* meetings were read and on motion duly made, seconded and carried, were approved as read.

The Commissioners thereupon took up the consideration of the Petition which had heretofore been filed with them relative to the issuance of Seventy-five Thousand Dollars of coupon bonds of said Irrigation District, and after examining said Petition, and it appearing to the Commissioners that said Petition had been signed by a majority in number and acreage of the owners, holders of title or evidence of title, to the lands embraced within

said Irrigation District, and it appearing that said Petition was in all respects regular and had been properly and regularly signed and executed, pursuant to law, Commissioner Ungles introduced offered and moved the adoption of the following resolutions:

BE IT RESOLVED AND FOUND, by the Board of Commissioners of the Big Horn-Tullock Irrigation District of Treasure County, Montana, in regular meeting assembled, and having under consideration the Petition of the land owners within said District, praying for a bond issue in the sum of Seventy-five Thousand Dollars; that said Petition is signed by more than a majority in number and acreage of all of the holders of title or evidence of title, to the land included within said District, and that the issuance of said bonds was necessary to carry out the purpose for which said District was organized and properly and adequately irrigated and reclaim the lands therein. Whereupon the same being seconded by Commissioner Perkins, and upon the roll being called and Commissioners Dinsdale, Ungles and Perkins each voting "Aye," it was declared that the foregoing resolution and finding had been regularly and unanimously adopted.

Commissioner Ungles offered and moved the adoption of the following resolution:

BE IT RESOLVED, by the Board of Commissioners of the Big Horn-Tullock Irrigation District of Treasure County, Montana, in regular meeting assembled, that, [36]

WHEREAS, a Petition having been filed with the Board of Commissioners of said Big Horn-Tullock Irrigation District bearing the signature of the requisite number of holders of title or evidence of title to lands included within said District and representing the requisite amount of acreage therein, and praying for the issuance of coupon bonds of said District in the sum of Seventy-five Thousand Dollars, for the purposes therein set forth, and,

WHEREAS, this Board of Commissioners having under consideration the said Petition, has determined that it is necessary, in order to carry out the purpose for which said Irrigation District was organized and to adequately and properly reclaim the lands therein, to issue coupon bonds of the District in the sum of Seventy-five Thousand Dollars.

THEREFORE BE IT RESOLVED, by the Board of Commissioners of the Big Horn-Tullock Irrigation District, that the prayer of said Petition be, and the same is hereby granted, and that this Board does now by proper proceedings, orders and resolutions, provide for the issuance of said bonds as prayed for in said Petition and pursuant to the terms and provisions of Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana and Acts amendatory thereto and in such manner and form and containing such provisions and conditions as may be, in the judgment of this Board of Commissioners, to the best interest of said District and the land owners therein,—Whereupon the same being seconded by Commis-

sioner Perkins, and the roll being called, and Commissioners Dinsdale, Ungles and Perkins each voting "Aye," it was declared that such motion had been unanimously carried and that said resolution had been adopted.

Thereupon the Board of Commissioners proceeded to discuss and consider the form and details of the bond issue prayed for by said Petition, and Commissioner Ungles offered and moved the adoption of the following resolution:

A RESOLUTION

PROVIDING FOR THE ISSUANCE AND SALE OF THE COUPON BONDS OF THE BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA, FOR THE PURPOSE OF PROVIDING NECESSARY FUNDS FOR THE ACQUIRING OF THE NECESSARY WATER AND WATER RIGHTS AND THE PURCHASE, CONSTRUCTION AND INSTALLATION OF IRRIGATION DITCHES, MACHINERY, EQUIPMENT, PROPERTY AND IRRIGATION SYSTEM TO PROPERLY AND ADEQUATELY IRRIGATE AND RECLAIM THE LANDS WITHIN SAID DISTRICT. AND FOR CARRYING OUT OF THE PURPOSE FOR WHICH SAID DISTRICT WAS CREATED AND ORGANIZED; FOR PRESCRIBING THE FORM AND [37] DETAILS OF SAID BONDS AND PROVIDING FOR THE

LEVYING OF A SPECIAL TAX OR ASSESSMENT ON THE LANDS IN SAID DISTRICT, SUFFICIENT IN AMOUNT TO PAY THE PRINCIPAL AND INTEREST ON SAID BONDS WHEN DUE; AND FOR THE CONFIRMATION OF THE PROCEEDINGS OF THE BOARD OF COMMISSIONERS OF SAID DISTRICT IN RELATION THERETO, BY THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF TREASURE.

BE IT RESOLVED, by the Board of Commissioners of the Big Horn-Tullock Irrigation District, of Treasure County, Montana, in regular meeting assembled:

That (the) bonds of said Big Horn-Tullock Irrigation District in an amount not exceeding the sum of Seventy-five Thousand Dollars, be issued for the purpose of providing the necessary funds for constructing the necessary irrigation canals and works and acquiring the necessary property and rights thereof and meeting the expense incident thereto, and for the purpose of acquiring by purchase, water rights, canals and irrigation works, constructed and partially constructed, and for the purpose of acquiring and providing an adequate system of irrigation works for said canal; that said bonds shall be 150 in number, numbered consecutively from one (1) to one hundred fifty (150) both inclusive,

of the denomination of Five Hundred Dollars (\$500.00) each.

Said bonds shall mature serially, beginning with number one (1); the first fifteen of said bonds shall mature January 1, 1926; and each year thereafter fifteen of said bonds shall mature, and the last of said bonds, numbered from one hundred thirty-six (136) to one hundred fifty (150), both inclusive, shall mature January 1, 1935, said bonds shall bear interest at the rate of six per cent (6%) per annum, payable annually on the first day of January of each year, at the office of the County Treasurer of Treasure County, Montana; both principal and interest of said bonds shall be payable in gold coin of the United States.

The form of said bonds and interest coupons thereto attached, except as to the numbers and distinguishing marks, shall be as follows, to wit:

(BOND)

United States of America,	\$500.00
State of Montana.	No.———
Big Horn-Tullock Irrigation District	
Six Per Cent Gold Bond.	

[38]

FOR VALUE RECEIVED, Big Horn-Tullock Irrigation District, a public corporation, organized, existing and doing business under and by virtue of the laws of Montana, with its principal place of business at Big Horn, in Treasure County, Mon-

tana (hereinafter called the District), promises to pay to the bearer, or, if this bond is registered, then to the registered holder thereof, the sum of Five Hundred Dollars in gold coin of the United States of America, of the present standard of weight and fineness, on the 1st day of January, 1926, at the office of the County Treasurer of Treasure County, Montana, together with the interest thereon from the date hereof at the rate of six per cent per annum, payable annually in like gold coin on the first day of January of each year during the period of this bond, at the office of the said County Treasurer, upon presentation and surrender of the respective coupons thereto attached as they severally become due and payable.

This bond and the coupons hereto attached are payable without any deduction for tax or taxes which said district may be required to pay or retain therefrom under or by reason of any future law of the United States of the state of Montana. Said district agrees that in the event it shall be required to pay such taxes, such payment shall not be chargeable against or collectible from the owner or holder of this bond.

This bond is one of a series of one hundred fifty coupon bonds, numbered from one (1) to one hundred fifty (150), both inclusive, and being each of the denomination of \$500, all being of like tenor, date and effect, except as to date of payment, and all issued under the provisions of Chapter 146, of the Session Laws of 1909 of the State of Montana,

and the Amendments thereto, and all equally secured by the lien on the land in said district as provided for in said Chapter and said Amendments, and which is a first lien upon said lands.

This bond shall pass by delivery unless it has been registered upon the books of the secretary of the Board of Commissioners of said District, and may be so registered as to the principal thereof upon application to such Secretary. Such registration of ownership shall be duly noted thereon, and after such registration no transfer shall be valid unless it be made upon the books of said Secretary by the registered holder thereof in person or by attorney duly authorized and similarly noted hereon. This bond may, however, be discharged from the [39] effect of such registration by being transferred on the said books to the bearer, and thereafter transferability by delivery shall be restored. It may, however, from time to time be again registered or again transferred to bearer as before. Such registration shall not, however, affect the negotiability of the coupons, which shall always be transferable by delivery merely.

Fifteen of said bonds shall be paid January 1, 1926, and each year thereafter fifteen of said bonds shall mature, and the last of said bonds numbered from one hundred thirty-six (136) to one hundred fifty (150), both inclusive, shall mature January 1, 1935, said bonds being paid in the order of their numbers.

IN WITNESS WHEREOF, said Big Horn-Tullock Irrigation District has caused this bond to be

executed in its corporate name, signed by its President, attested by its Secretary, and has also caused its corporate seal to be affixed hereto, and in addition thereof, has caused coupons for the interest hereon, bearing the engraved facsimile signature of the President and Secretary to be attached, this first day of November, A. D. 1919.

**BIG HORN-TULLOCK IRRIGATION
DISTRICT.**

By _____,
President Board of Commissioners.

Attest: _____,
Secretary.

The coupons attached to said bonds with the exception of the first shall be in the following form:

On the first day of January, 19—, the Big Horn-Tullock Irrigation District, will pay to the bearer at the office of the County Treasurer of Treasure County, Montana, Thirty Dollars (\$30) in gold coin, free from all taxes, being one year's interest on its six per cent (6%) gold bond Number _____.

**BIG HORN-TULLOCK IRRIGATION
DISTRICT.**

By _____,
President.

Attest: _____,
Secretary.

The first coupon shall be of like tenor and effect, except as to the amount payable and the length of time interest has accumulated.

BE IT FURTHER RESOLVED, That the Board of Commissioners of said District shall annually, at the time and in the manner prescribed by law, for the first four years after the issuance of said bonds, levy a special tax and assessment against all lands in said district for the irrigation and benefit of which said district was organized [40] and said bonds were issued, sufficient to pay the interest on said bonds and maintenance of said irrigation system, and thereafter shall annually, within the time and in the manner prescribed by law, levy a special tax and assessment upon said bonds and the principal of said bonds which shall mature within the next year, and the cost of maintenance of such irrigation system.

BE IT FURTHER RESOLVED, That the Board of Commissioners within ten days of this date, prepare the necessary Petition and other papers and file same in the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure, for the confirmation of all proceedings had with reference to the issuance of said bonds.

BE IT FURTHER RESOLVED, That the said bond issue herein shall be issued, negotiated, sold by or under the direction of the Board of Commissioners of said District, and said Bonds, issued herein, may, at the discretion of the Board of Commissioners be issued direct in payment and satisfaction of any contract for the acquiring of necessary water and water rights and the purchases, construction and installation of the irrigation ditches,

machinery, equipment, property, and irrigation system to properly and adequately irrigate and reclaim the lands within the said District, and the proceeds thereof, if sold in whole or part, shall be delivered to the County Treasurer of Treasure County, Montana, in manner and form as provided by law, to be placed to the credit of said District, and to be paid out by said County Treasurer as provided by law.

Whereupon the motion for the adoption of the foregoing resolution being seconded by Commissioner Perkins, the same having been read and considered by the Board of Commissioners, and the roll being called and Commissioners Dinsdale, Ungles and Perkins each voting "Aye," said resolution was declared passed and adopted by the unanimous vote of the Board of Commissioners and ordered spread upon the records of this meeting.

It was duly moved and seconded that Henry V. Beeman as Attorney and Counsel for the Board of Commissioners, be and he is hereby authorized and instructed to prepare at once and file in the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure a Petition for the ratification, approval and confirmation of the bond issue and special tax or assessment provided for by the foregoing resolutions; and upon the roll being called, and Commissioners Dinsdale, Ungles and Perkins each voting "Aye," it was declared that said motion had been unanimously [41] passed and adopted.

Upon motion duly made, seconded and carried the Board of Commissioners adjourned *sine die*.

Approved: JEFFREY DINSDALE,
President.

Attest: W. E. UNGLES,
Secretary.

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

State of Montana,
County of Treasure,—ss.

W. E. Ungles, of lawful age, being first duly sworn, upon oath, deposes and says:

That he is the duly appointed, qualified and acting Secretary of the Board of Commissioners of the Big Horn-Tullock Irrigation District of Treasure County, Montana, and that the several petition, minutes, proceedings and orders set forth herein and made a part of the foregoing petition as exhibits thereto, are full, true, and correct copies of said several petitions, minutes, proceedings and orders as they appear upon the records of the Board of Commissioners of said District, and on file in his office.

W. E. UNGLES.

Subscribed and sworn to before me this 22d day of October, 1919.

[Notarial Seal] HENRY V. BEEMAN,
Notary Public for the State of Montana, Residing
at Forsyth, Montana.

My commission expires April 4, 1922.

[Indorsed]: Filed Oct. 24, 1919. J. D. Clark, Clerk. By F. M. Clark, Deputy. [42]

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Issuance of Seventy-five Thousand Dollars of the Coupon Bonds of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA.

ORDER FIXING DAY FOR HEARING ON PETITION.

The petition of L. S. Perkins, Floyd Ungles and Jeffrey Dinsdale, as the Board of Commissioners of the Big Horn-Tullock Irrigation District of Treasure County, Montana, having heretofore been filed with the Clerk praying for ratification, confirmation and approval of a bond issue of the Big Horn, Tullock Irrigation District in the sum of Seventy-five Thousand Dollars, for carrying out the purposes for which said Irrigation District was organized, and praying for the confirmation of said bonds, and the ratification, confirmation and approval of the special tax and assessment levied for the purpose of providing funds for the payment of the principal and interest on said bonds, as the same shall become due and payable, and said Petition being this day presented to the Court:

IT IS HEREBY ORDERED, that the time of the hearing of said Petition be and the same is hereby fixed and set for the 17th day of November, 1918, at the courtroom in the courthouse in the town of Hysham, Treasure County, Montana, the county wherein said district is situated, at the hour of 10 A. M. of said day. And the Clerk of this court is hereby ordered to give notice of the filing of said Petition, and the day of the hearing thereon, by the publication of notice thereof in manner and form as by law required, in the "Hysham Echo," a newspaper of general circulation, published in said County of Treasure, for two calendar weeks, and also by posting a written or printed copy thereof in at least three public places in each of the divisions of said Big Horn-Tullock Irrigation District. The first publication thereof and such posting to be made and done not less than fifteen days prior to the day fixed for said hearing.

Dated this 24th day of October, 1919.

GEO. P. JONES,
Judge of District Court.

[Indorsed]: Filed Oct. 24, 1919. J. D. Clark,
Clerk. By F. M. Clark, Deputy. [43]

In the District Court of the Fifteenth Judicial District of the State of Montana, in and for the County of Treasure.

In the Matter of the Issuance of Seventy-five Thousand Dollars of the Coupon Bonds of the BIG HORN-TULLOCK IRRIGATION DISTRICT OF TREASURE COUNTY, MONTANA.

DECREE.

On this 17th day of November, 1919, the petition of L. S. Perkins, Floyd Ungles and Jeffrey Dinsdale, the duly appointed qualified and acting Board of Commissioners of the Big Horn-Tullock Irrigation District of the County of Treasure, State of Montana, filed in this court on the 24th day of October, 1919, and praying for the ratification, confirmation and approval of a bond issue of said Big Horn-Tullock Irrigation District in the sum of Seventy-five Thousand Dollars, the proceedings relative thereto, and a special tax or assessment levied for the payment of the principal and interest on said bonds, coming regularly on to be heard pursuant to the prior order of this Court made and entered in this cause on the 24th day of October, 1919, fixing and appointing the 17th day of November, 1919, as the time for the hearing thereof, and said petitioners appearing in person and by counsel and no person or persons, corporations or firms, having appeared either by counsel or otherwise, for the

purpose of objecting or opposing said petition; the Court proceeded with the hearing thereof.

Thereupon, upon proof heard by the Court, and the Court being fully advised in the premises, it was by the Court found and determined.

That due and legal notice of the hearing of said petition had been given by the Clerk of this court within the time, and for the length of time and in the manner and form provided for by law, and the prior order of this Court.

That the Big Horn-Tullock Irrigation District was created by a judgment of this Court, duly made and entered as in said petition set forth, that the petitioners herein are the duly appointed, qualified and acting, Commissioners of said Big Horn-Tullock Irrigation District; that heretofore all of the proceedings, acts, matters and things set forth in said petition have been done and performed in manner and form as alleged therein, in a strict conformity with the provisions of the law of the State of Montana, relative thereto, and that all proceedings and things requisite and necessary to be done precedent to the issuance of said bonds, and the levy of the special tax for the payment of the principal of, and the interest [44] on said bonds, have been done and performed in regular and due time, form and manner and in all respects as by law required.

That each and all of the requirements and provisions of Section 40 and Chapter 146 of the Acts of the Eleventh Legislative Assembly of the State of Montana, and all acts amendatory thereof and supplemental thereto, have been fully complied with.

That all of the proceedings relative to the issuance of said bonds, and the levy of the special tax of assessment for the payment of the principal of and the interest on said bonds referred to in the petition herein filed are regular, legal and valid.

That said bonds have been regularly, legally and validly issued, and that the special tax or assessment so levied for the payment of the principal of, and the interest on said bonds, has been regularly, legally and validly levied and assessed, and that each and all of the actions taken by the Board of Commissioners of said Big Horn-Tullock Irrigation District, in connection therewith, have been regularly, legally and validly done in manner and form as provided by law.

WHEREFORE, by reason of the law and the premises, it is by the Court ORDERED, ADJUDGED AND DECREED that the proceedings had, held, taken and enacted by the Board of Commissioners of the Big Horn-Tullock Irrigation District of the County of Treasure, State of Montana, in relation to the issuance of Seventy-five Thousand Dollars of bonds of said District, and the levy and assessment of the special tax or assessment for the payment of the principal of and the interest on said bonds, and the same is hereby ratified, approved, confirmed and declared valid as a whole.

That said bond issue be and is in the aggregate sum of Seventy-five Thousand Dollars numbered from 1 to 150, both inclusive, each of said bonds being in the denomination of Five Hundred Dollars,

and each and all of said bonds shall bear the date of November 1, 1919. That said bonds shall mature serially, beginning with number 1, the first fifteen of said bonds shall mature January 1, 1926, and each year thereafter fifteen bonds shall mature, the last of said bonds, numbered from 136 to 150, both inclusive, shall mature January 1, 1935; said bonds shall bear interest at the rate of six per cent per annum, payable annually on the 1st day of January of each year, at the office of the county treasurer of Treasure County, Montana, both principal and interest of said bonds shall be payable in [45] gold coin of the United States, said bonds being particularly described and set forth in the petition filed herein.

That said bonds be and the same are hereby ratified, approved and confirmed and declared to be and constitute a lien upon all of the lands now within, or at any time hereafter included in said Big Horn-Tullock Irrigation District, except upon such lands as may be at any time included in said District, on account of the exchange or substitution of water as provided for by law.

That the special tax or assessment levied or assessed, as set forth in the petition herein, and in the proceedings of the said Board of Commissioners of the Big Horn-Tullock Irrigation District, be, and the same is hereby, ratified, approved and confirmed as a whole, and declared to be and constitute hereby a lien upon all of the lands now within, or at any time hereafter included in said District for the irrigation and benefit of which said District was

organized, except upon such lands as may at any time be included within said District on account of the exchange or substitution of water as provided for by law, and that all of the lands in said District, at the time of the issuance of said bonds, and all lands now within said District, and all lands subsequently included therein, which are so chargeable under the provisions of law, shall be and remain liable to be taxed and assessed as provided for by said special tax or assessment so levied for the payment of said bonds, and the interest thereon.

Done in open court this 17th day of November, 1919.

GEO. P. JONES,
Judge of District Court.

[Indorsed]: Filed November 17, 1919. J. D. Clark, Clerk. By F. M. Clark, Deputy.

[Endorsed]: Bill of Complaint. Filed September 13, 1927. C. R. Garlow, Clerk. [46]

AND THEREAFTER, and on the 29th day of November, 1913, the defendants, Union Trust Company, a corporation, and Spokane & Eastern Trust Company, a corporation, filed herein their motion to dismiss, which said motion is as follows, to wit:
[47]

[Title of Court and Cause.]

MOTION TO DISMISS.

Now come the defendants, Union Trust Company, a corporation, and Spokane & Eastern Trust Company, a corporation, in said above-entitled cause, and move the Court to dismiss the said complainants' bill of complaint on file herein as to these moving defendants, upon the grounds and for the reasons:

1. That the said amended bill of complaint does not state sufficient facts to constitute a valid cause of action in equity against these moving defendants, or either of them, in that the said bill of complaint does not set forth any matter of equity entitling the said complainants, or either of them, to the relief prayed for therein, or any relief; and no facts are stated in said bill of complaint sufficient to entitle said complainants, or either of them, to any relief against these moving defendants, or either of them.

WHEREFORE, these moving defendants pray the judgment of the Court whether they, or either of them, shall further answer [48] said bill of complaint; and that they be dismissed with their costs.

GUNN, RASCH, HALL & GUNN,
Solicitors for Defendants, Union Trust Company
and Spokane & Eastern Trust Co.

M. S. GUNN,

Of Counsel. [49]

[Title of Court and Cause.]

AFFIDAVIT OF M. S. GUNN.

State of Montana,

County of Lewis and Clark,—ss.

M. S. Gunn, being first duly sworn, deposes and says:

That he is one of the solicitors for the defendants, Union Trust Company and Spokane & Eastern Trust Company, in said above-entitled cause, and resides and has his office the same as the other solicitors whose names are subscribed as such to the foregoing motion to dismiss the complainants' bill of complaint, in the City of Helena, Lewis and Clark County, State of Montana. That the solicitors for said complainants in said cause are Mr. John A. Shelton and Mr. W. N. Waugh, whose residences, offices, and places of business are in the City of Butte, Silver Bow County, Montana. That there is direct communication by United States mail between the said City of Helena, affiant's place of residence and business, and the said City of Butte, the place of residence and business of said solicitors for complainants. That affiant on the 29th day of November, 1927, at the hour of 10 P. M., [50] deposited in the United States postoffice at Helena, Montana, enclosed in an envelope securely sealed and with the necessary and proper amount of postage thereon prepaid, and addressed to said Mr. John A. Shelton, Attorney at Law, Butte, Montana, for transmission by said United States mail and

delivery to said John A. Shelton, a true, correct and accurate copy of the foregoing motion of said defendants, Union Trust Company and Spokane & Eastern Trust Company, for the dismissal of said complainants' bill of complaint, upon the grounds specifically stated therein.

M. S. GUNN.

Subscribed and sworn to before me this 29 day of November, 1927.

[Notarial Seal]

E. M. HALL,

Notary Public for the State of Montana, Residing at Helena, Montana.

My commission expires Aug. 5, 1928.

Filed November 29, 1927. [51]

AND THEREAFTER, to wit, on the 3d day of August, 1928, the Court made and filed herein its decision as follows, to wit: [52]

[Title of Court and Cause.]

DECISION.

Plaintiffs are owner and mortgagee of lands within a statutory irrigation district, and defendants are owners of bonds and warrants by the district issued for construction and maintenance, owners of other like lands, and the collector of taxes levied upon the lands to pay said obligations.

The relief sought is annulment of the proceedings of the state court establishing the district, and avoidance of the liens of the taxes.

Some of the owners of bonds and warrants move to dismiss the complaint for that it is insufficient for any relief. The motion is granted in respect to all defendants.

The district was created and the bonds issued in 1919; the taxes were imposed and the warrants issued for several succeeding years were paid in 1920 but not thereafter, and because of the delinquency the lands were sold in 1922; and this suit was begun in 1927.

Referring to Tomich alone, the others in poorer case, although he did not sign the petition to create the district, it included his lands, he had notice thereof, was at least a passive participant, did not resort to the statutory remedies to defeat or correct organization, inclusion of his lands, or taxes, paid the latter in 1920, and in consequence he acquiesced and is estopped to maintain this unduly delayed suit or to otherwise complain, whatever be the mere irregularity in *any the* proceedings. He stood silent when he should have spoken and will not be heard to speak now. See the cases cited by defendants, and 266 U. S. 269; 267 U. S. 487. He contends, however, that prior to organization his lands were irrigated, that the statute provides none such shall be included save with the owner's written consent, that he did not consent, and that in consequence the Court was without jurisdiction to include his lands and to that extent the proceedings are void. In this, he fails to distinguish between jurisdiction or power, and duty. See 210 U. S. 235, and jurisdiction generally. The Court had jurisdiction over all the

lands embraced in the petition and power to include them in the district. Its duty was to include no lands whereof the evidence before it was that they were already irrigated, without written consent of the owner. To this extent the case may be like any other wherein the Court has jurisdiction, and despite its duty renders judgment in favor of a cause of action not proven, viz., the judgment is subject to defeat on appeal, but is impregnable to collateral attack. Or, being a matter of mere evidence and not jurisdiction, it will be conclusively presumed the evidence warranted the Court's judgment. In either case, Tomich is concluded by the proceedings and cannot impeach them herein. The foregoing principles foreclose all other contentions made, and the latter need no particular comment. Some of them are based on vague and ambiguous allegations and conclusions, suggestive of evasion of direct statement beyond supporting fact, as though in hope to set out a *prima facie* case.

The situation is simply this: This irrigation project was ill advised or mismanaged, and disaster followed. Plaintiffs would escape the consequences by shifting the loss to defendants who supplied the money for the enterprise. It just cannot be done, at least not in a court of equity.

Decree for defendants.

Aug. 3, 1928.

BOURQUIN, J.

Filed August 3, 1928. [53]

AND THEREAFTER on the 9th day of August, 1928, the Court made and filed herein its final decree, which was entered of record as follows, to wit:

In the District Court of the United States in and
for the District of Montana.

T. TOMICH, HARRY F. SCOTT, and H. MUL-
BERGER,

Complainants,

vs.

UNION TRUST COMPANY, a Corporation,
SPOKANE & EASTERN TRUST CO., a
Corporation, BIG HORN TULLOCK IR-
RIGATION DISTRICT, a Corporation,
ASH SHEEP COMPANY, a Corporation,
E. J. McCORMICK, County Treasurer of
Treasure County, Montana, CHARLES P.
DONNES, H. L. HOYLMAN, JEFFREY
DINSDALE, H. M. SRITE, NICK TOP-
SICK, PETER BONGUNONVICH,
FLOYD UNGLES, C. M. VREELAND,
JOHN LIGHTBODY, ROBERT E.
CLEARY, and N. P. MARSHALL,

Defendants.

FINAL DECREE.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED, and DECREED as follows:

That the bill of complaint herein be, and the same hereby is dismissed as to all of the defendants.

Dated this 9th day of August, A. D. 1928.

BOURQUIN,
Judge.

Filed and entered Aug. 9th, 1928. [54]

AND THEREAFTER, to wit, on the 8th day of November, 1928, assignment of errors was filed herein, which is in the words and figures as follows, to wit: [55]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Come now the complainants herein and assign errors in the decision and in the decree of the United States District Court of the District of Montana made and rendered herein on the 4th day of August, 1928, and the 9th day of August, 1928, respectively, as follows:

First: The Court erred in sustaining the motion of the defendants Union Trust Company and Spokane & Eastern Trust Co. to dismiss the bill herein.

Second: The Court erred in holding and decreeing that the bill herein should be dismissed as to all defendants.

Third: The Court erred in its decision herein in ignoring the contention of complainants that warrants alleged to have been issued by Big Horn Tullock Irrigation District were void because the in-

debtedness for which the said warrants were issued exceeded the limitation prescribed by the Montana Irrigation District Act.

In order that the foregoing assignment of errors may appear of record, the complainants present the same to the Court and pray that such disposition may be made thereof as is in accordance with the laws and statutes of the United States in such cases made and provided, and complainants pray a reversal of the decree dismissing the bill herein.

JOHN A. SHELTON,
Solicitor for Complainants.

Filed Nov. 8, 1928. [56]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the U. S. Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 67 pages, numbered consecutively from 1, to 67, inclusive, is a true and correct transcript of the record and proceedings had in the within-entitled cause and of the whole thereof required, by praecipe filed, to be incorporated in said transcript, as appears from the original records and files of said court and cause in my custody as such Clerk; and I do further cer-

tify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of said transcript amount to the sum of Eight and no/100 Dollars (\$8.00), and have been paid by the appellants.

WITNESS my hand and the seal of said court at Butte, Montana, this 18th day of December, A. D. 1928.

[Seal]

C. R. GARLOW,
Clerk.

By L. R. Polglase,
Deputy. [67]

[Endorsed]: No. 5664. United States Circuit Court of Appeals for the Ninth Circuit. T. Tomich, Harry F. Scott and H. Mulberger, Appellants, vs. Union Trust Company, a Corporation, and Spokane & Eastern Trust Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed December 21, 1928.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 5664.

T. TOMICH et al.,

Appellants,

vs.

UNION TRUST COMPANY et al.,

Appellees.

STATEMENT OF ERRORS UPON WHICH
THE APPELLANT INTENDS TO RELY
AND THE PARTS OF THE RECORD
WHICH HE CONSIDERS NECESSARY
FOR THE CONSIDERATION THEREOF.

Come now the appellants herein and in pursu-
ance of Rule 23, subdivision 8, state:

First: That they intend to rely upon all of the
errors assigned in the assignment of errors in-
cluded in the transcript on appeal herein.

Second: That they consider necessary for the
consideration thereof the following portions of the
transcript on appeal herein, to wit:

Bill of complaint,

Motion to dismiss,

Decision of the Court below,

Decree in the court below, and

Assignment of errors,

and all other portions of the said transcript the ap-

pellant considers unnecessary for the consideration thereof.

JOHN A. SHELTON,
Solicitor for Appellant.

Due service of the above and foregoing paper by copy thereof admitted this — day of December, 1928.

M. S. GUNN,
Solicitor for Appellees.

[Endorsed]: Statement of Errors upon Which the Appellant Intends to Rely and the Parts of the Record Which He Considers Necessary for the Consideration Thereof. Filed Jan. 12, 1929.
Paul P. O'Brien, Clerk.